

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	Civil Action No. 96-1285
)	(Judge Lamberth)
v.)	
)	
DIRK KEMPTHORNE, Secretary of)	
the Interior, et al.,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' RESPONSE TO MOTION FOR DEFAULT JUDGMENT
FILED BY NONPARTY EDDIE JACOBS**

Defendants in this class action case respectfully submit this response to the October 23, 2006 filing by Eddie Jacobs, which he styles as a Motion for Default Judgment. Mr. Jacobs is not a named party. He has filed no complaint, nor has he filed a motion to intervene. In 2004, this Court denied Mr. Jacobs' request to submit a friend of the court brief. Order of Sept. 2, 2004 [Dkt. No. 2666]. To the extent that Mr. Jacobs is a putative member of the certified class of plaintiffs, his interests in that respect fall exclusively within the province of the named representative plaintiffs and their appointed class counsel. See Adair v. Sorenson, 134 F.R.D. 13, 16 (D. Mass. 1991) ("A court must assess standing to sue based upon the standing of the named plaintiff and not upon the standing of unidentified class members.") (citing Warth v. Seldin, 422 U.S. 490 (1975)). Therefore, nonparty Mr. Jacobs has no standing to seek a judgment of any type, and the Court is without subject matter jurisdiction to consider any claim he purports to assert by motion. See Scolaro v. District of Columbia Bd. of Elections and Ethics,

104 F. Supp. 2d 18, 29 (D.D.C. 2000) (allegations made in a brief but not in complaint do not confer standing).

Regardless of Mr. Jacobs' lack of legal standing, no basis exists to enter a default judgment. Default judgments against the United States or, as here, officials of a federal department, are strongly disfavored. "No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." Fed. R. Civ. P. 55(e). "[W]hen the government's default is due to a failure to plead or otherwise defend, the court typically either will refuse to enter a default or, if a default is entered, it will be set aside." C. Wright, A. Miller, M. Kane, 10A FEDERAL PRACTICE & PROCEDURE § 2702. One treatise asserts that Rule 55(e) should be applied to preclude "any default judgment for procedural violations by the United States," and that "in all cases, the claim against the government must be proven." Id.; accord O-J-R v. Ashcroft, 216 F.R.D. 150, 152 (D.D.C. 2003) (Rule 55(e) "prohibits courts from entering default judgments against the United States or officers or agencies thereof unless the claimant, by evidence satisfactory to the court, establishes a right to relief."). Mr. Jacobs has tendered no proof, and he has no standing to do so.

Defendants do not concede any argument in Mr. Jacobs' brief and oppose his requests for relief to the extent they would impose an obligation upon the United States. Given his lack of standing apart from the class and the Court's want of jurisdiction to entertain Mr. Jacobs' requested relief against Defendants, no need exists to address the particulars underlying his

motion.¹ Should the Court determine, however, that Mr. Jacobs is entitled to move for default judgment, Defendants request an opportunity to address the particulars of his motion and his requests for relief at that time.

Conclusion

For the foregoing reasons, the Motion for Default Judgment should be denied in all respects.

Dated: November 2, 2006

Respectfully submitted,

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J. CHRISTOPHER KOHN
Director

/s/ Robert E. Kirschman, Jr.
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¹ For example, to the extent Mr. Jacobs seeks money from the government, this Court may not even possess jurisdiction to entertain the claim. See 28 U.S.C. §§ 1346(a)(2), 1491(a)(1) (money claims exceeding \$10,000 to be heard solely by the Court of Federal Claims.)

CERTIFICATE OF SERVICE

I hereby certify that, on November 2, 2006 the foregoing *Defendants' Response to Motion for Default Judgment Filed by Nonparty Eddie Jacobs* was served by Electronic Case Filing, and on the following *pro se* individuals who are not registered for Electronic Case Filing, as follows:

By facsimile to:

Earl Old Person (*individual party plaintiff*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

By Prepaid First Class U.S. Mail to:

Eddie Jacobs (*nonparty movant*)
P.O. Box 2322
Oklahoma City, OK 73101

/s/ Kevin P. Kingston
Kevin P. Kingston

United States District Judge